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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,492	01/02/2002	Raymond Lee Call II	DANAI-125A	5529

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STETINA BRUNDA GARRED & BRUCKER  
75 ENTERPRISE, SUITE 250  
ALISO VIEJO, CA 92656

EXAMINER
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BRINEY III, WALTER F

ART UNIT	PAPER NUMBER
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2615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/038,492

Applicant(s)

CALL ET AL.

Examiner

Walter F. Briney III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1, 2, 4-12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (US Patent 6,792,125) in view of Schroeder et al. (US Patent 4,122,315) in view of Gefvert (US Patent 4,502,149) and further in view of Kashiwabara (US Patent 4,552,242).**

**Claims 1, 2, 4-12 and 14** are limited to "a three-way speaker system." These claims are rejected for the reasons set forth in the Non-Final Rejection filed 02 November 2006, and hereby incorporated by reference.

**Claim 15** is limited to "the system as recited in claim 8," as covered by David in view of Schroeder in view of Gefvert and further in view of Kashiwabara. As seen in the sole figure of Kashiwabara, the midrange-tweeter module ranging between elements 21 and 39, bottom-to-top, comprises "a midrange speaker and a tweeter speaker, the midrange and tweeter speakers each being centered on the speaker axis." Therefore, David in view of Schroeder in view of Gefvert and further in view of Kashiwabara makes obvious all limitations of the claim.

2. **Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over David in view of Schroeder in view of Gefvert in view of Kashiwabara and further in view of Pfister (US Patent 6,161,262).**

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**Claim 3** is limited to "the system as recited in claim 1," as covered by David in view of Schroeder, in view of Gefvert and further in view of Kashiwabara. This claim is rejected for the reasons set forth in the Non-Final Rejection filed 02 November 2006, and hereby incorporated by reference.

### ***Allowable Subject Matter***

The following is a statement of reasons for the indication of allowable subject matter:

3. **Claim 13** is allowed.

**Claim 13** has been rewritten in independent form incorporating all the limitations of its base claim(s) thereby obviating the previous claim objection. Thus, claim 13 is allowable over the cited prior art.

### ***Response to Arguments***

Applicant's arguments filed 04 December 2006 have been fully considered but they are not persuasive.

On pages 6-8 of the instant response, the applicant alleges that any suggestion that a translatable, coaxial, three speaker system would be an obvious modification of the art is not supported. In support of this statement, the applicant posits (1) that the art has typically migrated to non-coaxial systems in order to accommodate a practical three speaker construction; (2) that the only coaxial, three speaker system on record (Kashiwabara) is "relatively complex;" and (3) that any motivation found in the art is of

the "obvious to try" variety since no basis to conclude how to build the claimed invention exists.

Applicant's first point derives from consideration of one prior art reference, namely Schroeder. In the rejections, Schroeder's teachings elucidated the deficiency in two-speaker systems, while calling for a three-speaker solution. While Schroeder's solution included a three-axis loudspeaker, Schroeder's teachings served as a logical starting point for providing three tuned speaker ranges versus the two ranges provided by David. Yet, Schroeder does not speak to a general trend of parallel-axis speakers in the art, as evidenced by the co-axial design of both David and Kashiwabara. Moreover, Kashiwabara established in 1983, seven-years after Schroeder, specific ailments of Schroeder's planar speakers. See column 1, lines 13-51. When these two teachings are paired with Gefvert, whom teaches the importance of translatable midrange speakers and tweeters, and David one is highly motivated to provide a coaxial, three-speaker system comprising a translatable midrange speaker and tweeter.

Regarding applicant's second point, one must ask how the applicant judged Kashiwabara's system as "relatively complex." Kashiwabara's system includes a midrange-tweeter module ranging between elements 21 and 39. The module is held statically in place relative to a woofer by way of elements 15, 16, 18 and 45. Replacing the tweeter (whose degree "complexity" is undisclosed) of David with the midrange-tweeter of Kashiwabara appears simple enough. Instead of mounting the module to the woofer by elements 15, 16, 18 and 45, the module would be placed in the cup formed by elements 32 and 36', seen in figure 6 of David's disclosure, which are held to the

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woofer 70 by stem 72. In any case, it is not the complexity of a system that governs whether it would have been obvious to incorporate it into another system; rather, what would one of ordinary skill in the art known to have done with the system. Motivation serves as a barometer for what one of ordinary skill in the art would have done, and in this case, one is highly motivated as will be shown more fully below.

Applicant's final evidence concerns the notion of "obvious to try." As the case law sets forth, a suggestion provides an "obvious to try" rationale when the suggestion merely piques an inventor's curiosity, but provides no tangible teachings of how to obtain the desired result. In other words, "obvious to try" requires that a suggestion be provided, but where no explanation exists for how to proceed in the suggested fashion. In contrast to this situation, the prior art of record provides a clear logical circuit from the base reference into the knowledge available and then back. Moreover, every teaching is tangible. David discloses a woofer co-axially aligned with a tweeter translatable about their shared axis; Schroeder recognizes the deficiency of using only two speakers and calls for the use of three; Gefvert teaches that midrange speakers and tweeters should be translatable about a woofer to provide optimal directivity; and Kashiwabara leads one from planar solutions to coaxial solutions, which is the most consistent with David's original disclosure. The physical incorporation comes only from the David and Kashiwabara reference, while motivation comes from Schroeder, Gefvert, Kashiwabara and David. Kashiwabara and David provide tangible images of how to build applicant's claimed invention. Their combined disclosures clearly extend beyond curiosity. For all the foregoing reasons, all rejections are maintained.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**SINH TRAN**  
**SUPERVISORY PATENT EXAMINER**

wfb  
3/3/07